

HOUSE BILL NO. 146

INTRODUCED BY SPAETH, HAGER, IVERSON, MANUEL,
HARPER, GRADY, THOFT, JENKINS, PATTERSON, ROTH,
NEUMAN, DRISCOLL, BACHINI, KOEHNKE, DEMARS,
POFF, ABRAMS, HAMMOND, KELLER, WEEDING, SCHYE,
BOYLAN, SEVERSON, HIRSCH, HOLLIDAY, CODY

IN THE HOUSE

JANUARY 12, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 21, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 23, 1987 PRINTING REPORT.

FEBRUARY 24, 1987 SECOND READING, DO PASS.

ENGROSSING REPORT.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, PASSED.
AYES, 97; NOES, 3.

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 27, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 28, 1987 SECOND READING, CONCURRED IN.

MARCH 30, 1987 THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 31, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1 *Cody* H.B. BILL NO. 146 *Shelley*
 2 INTRODUCED BY *Spaeth Hagen* *Juan Manuel*
 3 *Brady* *Thof* *Patterson* *Stok*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR IMMUNITY *ASB*
 5 AND INDEMNIFICATION IN CERTAIN CIVIL SUITS AGAINST OFFICERS, *KOEHN*
 6 DIRECTORS, AND OTHER EMPLOYEES OF PRIVATE IRRIGATION DITCH *DAME*
 7 OPERATORS; AND AMENDING SECTION 27-1-701, MCA." *Stok* *Gell*
 8 *Uebers* *Savage*

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: *Stok*
 10 NEW SECTION. Section 1. Civil immunity for and *Stok*
 11 indemnification of irrigation ditch directors, officers, and *Stok*
 12 other employees. (1) Directors, officers, and other
 13 employees of private irrigation ditch operators,
 14 corporations, companies, and organizations are not civilly
 15 liable for actions and omissions within the course and scope
 16 of their employment or position, except as provided in
 17 subsection (5).
 18 (2) Upon receiving service of a summons and complaint
 19 in an action against him, the employee shall give written
 20 notice to his supervisor requesting that a defense to the
 21 action be provided by the employer. If the employee has no
 22 supervisor, he shall give notice of the action to the
 23 attorney of the employer defending legal actions of that
 24 type. Except as provided in subsection (5), the employer
 25 shall offer a defense to the action on behalf of the

1 employee. The defense may consist of a defense provided
 2 directly by the employer. The employer shall notify the
 3 employee, within 15 days after receipt of notice, whether a
 4 direct defense will be provided. If the employer refuses or
 5 is unable to provide a direct defense, the employee may
 6 retain other counsel. Except as provided in subsection (5),
 7 the employer shall pay all expenses relating to the retained
 8 defense and pay any judgment for damages entered in the
 9 action that may otherwise be payable under this section.

10 (3) The employee must be indemnified by the employer
 11 for any money judgments or legal expenses, including
 12 attorney fees either incurred by the employee or awarded to
 13 the claimant, or both, to which the employee may be subject
 14 as a result of the suit unless the employee's conduct falls
 15 within the exclusions provided in subsection (5).

16 (4) Recovery against an employer is a complete bar to
 17 any action or recovery of damages by the claimant, by reason
 18 of the same subject matter, against the employee whose
 19 negligence or wrongful act, error, or omission or other
 20 actionable conduct gave rise to the claim. In an action
 21 against an employer, the employee whose conduct gave rise to
 22 the suit is immune from liability by reasons of the same
 23 subject matter if the employer acknowledges or is bound by a
 24 judicial determination that the conduct upon which the claim
 25 is brought arises out of the course and scope of the



1 employee's employment unless the claim constitutes an
2 exclusion provided in subsections (5)(b) through (5)(d).

3 (5) The employee may not be defended or indemnified by
4 the employer for any money judgments or legal expenses,
5 including attorney fees, to which the employee may be
6 subject as a result of the suit if a judicial determination
7 is made that:

8 (a) the conduct upon which the claim is based
9 constitutes oppression, fraud, or malice or for any other
10 reason does not arise out of the course and scope of the
11 employee's employment or position;

12 (b) the conduct of the employee is a criminal offense
13 as defined in Title 45, chapters 4 through 7;

14 (c) the employee compromised or settled the claim
15 without the consent of the employer; or

16 (d) the employee failed or refused to cooperate
17 reasonably in the defense of the case.

18 (6) If no judicial determination has been made
19 applying the exclusions provided in subsection (5), the
20 employer may determine whether those exclusions apply.
21 However, if there is a dispute as to whether the exclusions
22 of subsection (5) apply and the employer concludes it should
23 clarify its obligation to the employee arising under this
24 section by commencing a declaratory judgment action or other
25 legal action, the employer is obligated to provide a defense

1 or assume the cost of the defense of the employee until a
2 final judgment is rendered in such action holding that the
3 employer had no obligation to defend the employee. The
4 employer has no obligation to provide a defense to the
5 employee in a declaratory judgment action or other legal
6 action brought against the employee by the employer under
7 this subsection.

8 Section 2. Section 27-1-701, MCA, is amended to read:

9 "27-1-701. Liability for negligence as well as willful
10 acts. Everyone Except as otherwise provided by law, everyone
11 is responsible not only for the results of his willful acts
12 but also for an injury occasioned to another by his want of
13 ordinary care or skill in the management of his property or
14 person except so far as the latter has willfully or by want
15 of ordinary care brought the injury upon himself."

16 NEW SECTION. Section 3. Saving clause. This act does
17 not affect rights and duties that matured, penalties that
18 were incurred, or proceedings that were begun before the
19 effective date of this act.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 146

INTRODUCED BY SPAETH, HAGER, IVERSON, MANUEL,
HARPER, GRADY, THOFT, JENKINS, PATTERSON, ROTH,
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POFF, ABRAMS, HAMMOND, KELLER, WEEDING, SCHYE,
BOYLAN, SEVERSON, HIRSCH, HOLLIDAY, CODY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR IMMUNITY
AND INDEMNIFICATION IN CERTAIN CIVIL SUITS AGAINST OFFICERS,
DIRECTORS, AND OTHER EMPLOYEES OF PRIVATE IRRIGATION DITCH
OPERATORS DITCH COMPANIES; AND AMENDING SECTION 27-1-701,
MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. ~~Civil~~ INDIVIDUAL immunity for
and indemnification of irrigation ditch directors, officers,
and other COMPANY employees. (1) ~~Directors, officers, and
other employees of private irrigation ditch operators,
corporations, companies, and organizations are not civilly~~
AS USED IN THIS SECTION:

(A) "DITCH COMPANY" MEANS A PRIVATE, NOT-FOR-PROFIT
IRRIGATION DITCH OR WATER USER COOPERATIVE, CORPORATION,
ASSOCIATION, OR ORGANIZATION;

(B) "EMPLOYEE" MEANS A DIRECTOR, OFFICER, OR EMPLOYEE
OF A DITCH COMPANY.

(2) AN EMPLOYEE OF A DITCH COMPANY IS NOT INDIVIDUALLY
liable for actions and omissions within the course and scope
of their HIS employment or position, except as provided in
subsection (5) (6). THE IMMUNITY GRANTED BY THIS SUBSECTION
DOES NOT APPLY TO THE LIABILITY OF A NOT-FOR-PROFIT
COOPERATIVE, CORPORATION, ASSOCIATION, OR ORGANIZATION.

(3) Upon receiving service of a summons and
complaint in an action against him, the employee shall give
written notice to his supervisor requesting that a defense
to the action be provided by the employer DITCH COMPANY. If
the employee has no supervisor, he shall give notice of the
action to the attorney of the employer DITCH COMPANY
defending legal actions of that type. Except as provided in
subsection (5) (6), the employer DITCH COMPANY shall offer
a defense to the action on behalf of the employee. The
defense may consist of a defense provided directly by the
employer DITCH COMPANY. The employer DITCH COMPANY shall
notify the employee, within 15 days after receipt of notice,
whether a direct defense will be provided. If the employer
DITCH COMPANY refuses or is unable to provide a direct
defense, the employee may retain other counsel. Except as
provided in subsection (5) (6), the employer DITCH COMPANY
shall pay all expenses relating to the retained defense and
pay any judgment for damages entered in the action that may
otherwise be payable under this section.



1 †3†(4) The employee must be indemnified by the
 2 employer DITCH COMPANY for any money judgments or legal
 3 expenses, including attorney fees either incurred by the
 4 employee or awarded to the claimant, or both, to which the
 5 employee may be subject as a result of the suit unless the
 6 employee's conduct falls within the exclusions provided in
 7 subsection †5† (6).

8 †4†(5) Recovery against an--employer A DITCH COMPANY is
 9 a complete bar to any action or recovery of damages by the
 10 claimant, by reason of the same subject matter, against the
 11 employee whose negligence or wrongful act, error, or
 12 omission or other actionable conduct gave rise to the claim.
 13 In an action against an--employer A DITCH COMPANY, the
 14 employee whose conduct gave rise to the suit is immune from
 15 liability by reasons of the same subject matter if the
 16 employer DITCH COMPANY acknowledges or is bound by a
 17 judicial determination that the conduct upon which the claim
 18 is brought arises out of the course and scope of the
 19 employee's employment unless the claim constitutes an
 20 exclusion provided in subsections †5†(6)(b) through
 21 †5†(6)(d).

22 †5†(5) The employee may not be defended or indemnified
 23 by the employer DITCH COMPANY for any money judgments or
 24 legal expenses, including attorney fees, to which the
 25 employee may be subject as a result of the suit if a

1 judicial determination is made that:

2 (a) the conduct upon which the claim is based
 3 constitutes oppression, fraud, or malice or for any other
 4 reason does not arise out of the course and scope of the
 5 employee's employment or position;

6 (b) the conduct of the employee is a criminal offense
 7 as defined in Title 45, chapters 4 through 7;

8 (c) the employee compromised or settled the claim
 9 without the consent of the employer DITCH COMPANY; or

10 (d) the employee failed or refused to cooperate
 11 reasonably in the defense of the case.

12 †6†(7) If no judicial determination has been made
 13 applying the exclusions provided in subsection †5† (6), the
 14 employer DITCH COMPANY may determine whether those
 15 exclusions apply. However, if there is a dispute as to
 16 whether the exclusions of subsection †5† (6) apply and the
 17 employer DITCH COMPANY concludes it should clarify its
 18 obligation to the employee arising under this section by
 19 commencing a declaratory judgment action or other legal
 20 action, the employer DITCH COMPANY is obligated to provide a
 21 defense or assume the cost of the defense of the employee
 22 until a final judgment is rendered in such action holding
 23 that the employer DITCH COMPANY had no obligation to defend
 24 the employee. The employer DITCH COMPANY has no obligation
 25 to provide a defense to the employee in a declaratory

1 judgment action or other legal action brought against the
2 employee by the employer DITCH COMPANY under this
3 subsection.

4 Section 2. Section 27-1-701, MCA, is amended to read:

5 "27-1-701. Liability for negligence as well as willful
6 acts. Everyone Except as otherwise provided by law, everyone
7 is responsible not only for the results of his willful acts
8 but also for an injury occasioned to another by his want of
9 ordinary care or skill in the management of his property or
10 person except so far as the latter has willfully or by want
11 of ordinary care brought the injury upon himself."

12 NEW SECTION. Section 3. Saving clause. This act does
13 not affect rights and duties that matured, penalties that
14 were incurred, or proceedings that were begun before the
15 effective date of this act.

-End-

HOUSE BILL NO. 146

INTRODUCED BY SPAETH, HAGER, IVERSON, MANUEL,
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NEUMAN, DRISCOLL, BACHINI, KOEHNKE, DEMARS,
POFF, ABRAMS, HAMMOND, KELLER, WEEDING, SCHYE,
BOYLAN, SEVERSON, HIRSCH, HOLLIDAY, CODY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR IMMUNITY
AND INDEMNIFICATION IN CERTAIN CIVIL SUITS AGAINST OFFICERS,
DIRECTORS,--AND--OTHER EMPLOYEES OF PRIVATE-IRRIGATION-DITCH
OPERATORS DITCH COMPANIES; AND AMENDING SECTION 27-1-701,
MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Civil INDIVIDUAL immunity for
and indemnification of irrigation ditch directors, officers,
and--other COMPANY employees. (1) Directors, officers, and
other--employees--of--private--irrigation--ditch--operators,
corporations,--companies,--and--organizations--are--not--civilly
AS USED IN THIS SECTION:

(A) "DITCH COMPANY" MEANS A PRIVATE, NOT-FOR-PROFIT
IRRIGATION DITCH OR WATER USER COOPERATIVE, CORPORATION,
ASSOCIATION, OR ORGANIZATION;

(B) "EMPLOYEE" MEANS A DIRECTOR, OFFICER, OR EMPLOYEE
OF A DITCH COMPANY.

(2) AN EMPLOYEE OF A DITCH COMPANY IS NOT INDIVIDUALLY
liable for actions and omissions within the course and scope
of their HIS employment or position, except as provided in
subsection (5) (6). THE IMMUNITY GRANTED BY THIS SUBSECTION
DOES NOT APPLY TO THE LIABILITY OF A NOT-FOR-PROFIT
COOPERATIVE, CORPORATION, ASSOCIATION, OR ORGANIZATION.

(2)(3) Upon receiving service of a summons and
complaint in an action against him, the employee shall give
written notice to his supervisor requesting that a defense
to the action be provided by the employer DITCH COMPANY. If
the employee has no supervisor, he shall give notice of the
action to the attorney of the employer DITCH COMPANY
defending legal actions of that type. Except as provided in
subsection (5) (6), the employer DITCH COMPANY shall offer
a defense to the action on behalf of the employee. The
defense may consist of a defense provided directly by the
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notify the employee, within 15 days after receipt of notice,
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DITCH COMPANY refuses or is unable to provide a direct
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 2 employer DITCH COMPANY for any money judgments or legal
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 7 subsection †5† (6).

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 9 a complete bar to any action or recovery of damages by the
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 13 In an action against an--employer A DITCH COMPANY, the
 14 employee whose conduct gave rise to the suit is immune from
 15 liability by reasons of the same subject matter if the
 16 employer DITCH COMPANY acknowledges or is bound by a
 17 judicial determination that the conduct upon which the claim
 18 is brought arises out of the course and scope of the
 19 employee's employment unless the claim constitutes an
 20 exclusion provided in subsections †5†(6)(b) through
 21 †5†(6)(d).

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 23 by the employer DITCH COMPANY for any money judgments or
 24 legal expenses, including attorney fees, to which the
 25 employee may be subject as a result of the suit if a

1 judicial determination is made that:

2 (a) the conduct upon which the claim is based
 3 constitutes oppression, fraud, or malice or for any other
 4 reason does not arise out of the course and scope of the
 5 employee's employment or position;

6 (b) the conduct of the employee is a criminal offense
 7 as defined in Title 45, chapters 4 through 7;

8 (c) the employee compromised or settled the claim
 9 without the consent of the employer DITCH COMPANY; or

10 (d) the employee failed or refused to cooperate
 11 reasonably in the defense of the case.

12 †6†(7) If no judicial determination has been made
 13 applying the exclusions provided in subsection †5† (6), the
 14 employer DITCH COMPANY may determine whether those
 15 exclusions apply. However, if there is a dispute as to
 16 whether the exclusions of subsection †5† (6) apply and the
 17 employer DITCH COMPANY concludes it should clarify its
 18 obligation to the employee arising under this section by
 19 commencing a declaratory judgment action or other legal
 20 action, the employer DITCH COMPANY is obligated to provide a
 21 defense or assume the cost of the defense of the employee
 22 until a final judgment is rendered in such action holding
 23 that the employer DITCH COMPANY had no obligation to defend
 24 the employee. The employer DITCH COMPANY has no obligation
 25 to provide a defense to the employee in a declaratory

1 judgment action or other legal action brought against the
2 employee by the employer DITCH COMPANY under this
3 subsection.

4 Section 2. Section 27-1-701, MCA, is amended to read:

5 "27-1-701. Liability for negligence as well as willful
6 acts. Everyone Except as otherwise provided by law, everyone
7 is responsible not only for the results of his willful acts
8 but also for an injury occasioned to another by his want of
9 ordinary care or skill in the management of his property or
10 person except so far as the latter has willfully or by want
11 of ordinary care brought the injury upon himself."

12 NEW SECTION. Section 3. Saving clause. This act does
13 not affect rights and duties that matured, penalties that
14 were incurred, or proceedings that were begun before the
15 effective date of this act.

-End-

1 HOUSE BILL NO. 146
 2 INTRODUCED BY SPAETH, HAGER, IVERSON, MANUEL,
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 8 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR IMMUNITY
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 10 DIRECTORS, ~~AND OTHER~~ EMPLOYEES OF PRIVATE IRRIGATION DITCH
 11 OPERATORS DITCH COMPANIES; AND AMENDING SECTION 27-1-701,
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 13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 NEW SECTION. Section 1. Civil INDIVIDUAL immunity for
 16 and indemnification of irrigation ditch directors, ~~officers,~~
 17 and ~~other~~ COMPANY employees. (1) ~~Directors, officers, and~~
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 20 AS USED IN THIS SECTION:
 21 (A) "DITCH COMPANY" MEANS A PRIVATE, NOT-FOR-PROFIT
 22 IRRIGATION DITCH OR WATER USER COOPERATIVE, CORPORATION,
 23 ASSOCIATION, OR ORGANIZATION;
 24 (B) "EMPLOYER" MEANS A DIRECTOR, OFFICER, OR EMPLOYEE
 25 OF A DITCH COMPANY.

1 (2) AN EMPLOYEE OF A DITCH COMPANY IS NOT INDIVIDUALLY
 2 liable for actions and omissions within the course and scope
 3 of their HIS employment or position, except as provided in
 4 subsection ~~(5)~~ (6). THE IMMUNITY GRANTED BY THIS SUBSECTION
 5 DOES NOT APPLY TO THE LIABILITY OF A NOT-FOR-PROFIT
 6 COOPERATIVE, CORPORATION, ASSOCIATION, OR ORGANIZATION.
 7 ~~(2)~~ (3) Upon receiving service of a summons and
 8 complaint in an action against him, the employee shall give
 9 written notice to his supervisor requesting that a defense
 10 to the action be provided by the employer DITCH COMPANY. If
 11 the employee has no supervisor, he shall give notice of the
 12 action to the attorney of the employer DITCH COMPANY
 13 defending legal actions of that type. Except as provided in
 14 subsection ~~(5)~~ (6), the employer DITCH COMPANY shall offer
 15 a defense to the action on behalf of the employee. The
 16 defense may consist of a defense provided directly by the
 17 employer DITCH COMPANY. The employer DITCH COMPANY shall
 18 notify the employee, within 15 days after receipt of notice,
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 22 provided in subsection ~~(5)~~ (6), the employer DITCH COMPANY
 23 shall pay all expenses relating to the retained defense and
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 25 otherwise be payable under this section.

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15 liability by reasons of the same subject matter if the
16 employer DITCH COMPANY acknowledges or is bound by a
17 judicial determination that the conduct upon which the claim
18 is brought arises out of the course and scope of the
19 employee's employment unless the claim constitutes an
20 exclusion provided in subsections †5†(6)(b) through
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23 by the employer DITCH COMPANY for any money judgments or
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3 constitutes oppression, fraud, or malice or for any other
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16 whether the exclusions of subsection †5† (6) apply and the
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18 obligation to the employee arising under this section by
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20 action, the employer DITCH COMPANY is obligated to provide a
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24 the employee. The employer DITCH COMPANY has no obligation
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8 but also for an injury occasioned to another by his want of
9 ordinary care or skill in the management of his property or
10 person except so far as the latter has willfully or by want
11 of ordinary care brought the injury upon himself."

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13 not affect rights and duties that matured, penalties that
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